IN THE

# Supreme Court of the United States

October Term, 1972

Supreme Court, U. S.
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MICHAEL RODAK, JR., CLERK

No. 72-747

BLOOMFIELD HILLS SCHOOL DISTRICT,
*Petitioner,*

vs.

THE HONORABLE STEPHEN J. ROTH.

No. 72-748

WEST BLOOMFIELD SCHOOL DISTRICT OF OAKLAND COUNTY, MICHIGAN, *et al.*,
*Petitioners,*

vs.

THE HONORABLE STEPHEN J. ROTH.

No. 72-817

SCHOOL DISTRICT OF THE CITY OF BIRMINGHAM, OAKLAND COUNTY, MICHIGAN,
*Petitioner,*

vs.

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## MEMORANDUM IN OPPOSITION TO PETITIONS FOR WRITS OF CERTIORARI

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*Plaintiffs Below*

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## MEMORANDUM IN OPPOSITION TO PETITIONS FOR WRITS OF CERTIORARI

These Petitions for Writs of Certiorari are collateral to the lawsuit commenced in 1970 to desegregate the public

schools of the Detroit, Michigan area, *Bradley* v. *Milliken*. That matter was last before this Court this past Term on the Petition of the State officials who are defendants in the case seeking review (which was denied) of the dismissal of an interlocutory appeal by the Sixth Circuit. 468 F.2d 902, *cert. denied*, 93 S.Ct. 45 (1972).

Petitioners are all corporate entities, school districts which were created by and function pursuant to the authority of the State of Michigan, and each of which is located within Oakland County, Michigan—the county which abuts the City of Detroit to its northwest. Each of the Petitioners elected in early 1972 not to intervene before the District Court, at the time when some 40 similarly situated school districts sought and were granted the right to intervene in the *Bradley* v. *Milliken* proceedings since the District Court was considering possible forms of relief which might affect them as agents of the State of Michigan for educational purposes. Each of the Petitioners instead waited until after the District Court issued an order, defining the area surrounding and including the City of Detroit within which a desegregation plan was to be developed, and then Petitioners sought Writs of Prohibition or Mandamus from the Court of Appeals to halt proceedings in the District Court. In each instance, the Petitions for Mandamus or Prohibition were denied without prejudice to their right to seek intervention in the District Court.

Even then Petitioners did not avail themselves of the opportunity either to enter the case at the District Court level or to intervene in the Court of Appeals, which considered the merits of the District Court's order defining a "desegregation area" in an appeal argued August 24, 1972 pursuant to an Order expediting proceedings. Instead, each of the Petitioners sought rehearing or rehearing

*en banc* of the orders denying the extraordinary writs, and then filed with this Court the Petitions for review which are presently under consideration.

Since the filing of the Petitions, the Court of Appeals issued a ruling on December 8, 1972 in which it vacated the District Court's order defining a desegregation area and remanded for additional remedy hearings, holding that school districts (such as Petitioners), who would be affected by such a desegregation order, are necessary parties to proceedings in the District Court prior to the entry of such an order.* On January 16, 1973, however, the Court of Appeals issued an Order setting the matter down for rehearing *en banc* on February 8, 1973, with the effect of vacating the opinion of the panel.**

The Petitioners raise three basic issues, each of which is intimately bound up with the proceedings in the main appeals now pending before the United States Court of Appeals for the Sixth Circuit upon rehearing *en banc,* and each of which ought not be considered by this Court prior to disposition by the full Court of Appeals.

Petitioners claim, first, that the District Court should not have proceeded to enter a decree which affects the operation of their schools if they were not parties to the proceedings before the Court. Putting to one side the facts that Petitioners chose not to avail themselves of the opportunity for intervention which was seized by many of their sister districts and that Petitioners are each subsidiary agents of the State of Michigan (which *was* represented before the District Court), the claim is an in-

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* The December 8, 1972 opinion of the panel was reprinted as an appendix to the "Supplemental Brief in Support of Petitions for Writs of Certiorari to the United States Court of Appeals for the Fourth Circuit" in Nos. 72-549, 72-550.

** Rule 3(b), United States Court of Appeals for the Sixth Circuit.

appropriate one for review at this juncture. The panel of the Court of Appeals ruled on December 8, 1972—even though Petitioners disdained to participate in the appeals before the Court—that Petitioners were indeed necessary parties before the District Court. It is entirely possible that the full Court upon rehearing will reaffirm this element of the decision since, so far as these Respondents are presently aware, none of the parties opposes the participation of Petitioners in the remand hearings before the District Court which had been ordered by the panel. Thus, should that ruling be upheld *en banc,* the question whether the Petitions for Mandamus or Prohibition were properly denied will be rendered moot.*

Petitioners also complain that the District Court acted improperly when it determined to include their school districts in the "desegregation area" without specific findings that Petitioners had engaged in *"de jure"* segregation practices. This matter is one which perhaps might be viewed as lending support to Petitioners' claims that mandamus or prohibition should have issued, but it is intimately concerned in the present proceedings before the Court of Appeals and ought not to be reviewed at this stage. The panel's opinion at page 68 held:

> In fashioning an equitable remedy in this case, it will not be necessary for the District Court to find discriminatory conduct on the part of each school district, either de jure or de facto, as a prerequisite to including such district in a desegregation area to be defined by the Court's decree.

We are, of course, unable to predict whether this language will be adopted, modified, or rejected by the full Court, but certainly this Court's consideration of so important

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* Of course, should the panel's opinion be reversed by the full Court on the question of metropolitan desegregation relief, these Petitions will also thereby be mooted.

an issue will be materially aided by its intervening litigation before the Court of Appeals. *Cf. Brown Shoe Company* v. *United States*, 370 U.S. 294, 355 (Clark J., concurring).

Finally, two of Petitioners argue that the order of the District Court defining a desegregation area was one which could have been issued only by a statutory three judge court pursuant to 28 U.S.C. § 2281. This issue is likewise before the Court of Appeals in its consideration of the main case, and this Court would be better served by denying review of these Petitions and postponing its consideration for a later stage following the ruling of the entire Court of Appeals for the Sixth Circuit.

For these reasons, Respondents Bradley, et al., respectfully submit that the Petitions are premature, constitute attempts to secure piecemeal review, and should be denied so as to afford the Court of Appeals an opportunity to rule upon the substantive questions common both to these Petitions and to the matters now pending before it upon rehearing *en banc*.

Respectfully submitted,

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